**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 581 OF 1995

The State of Maharashtra, (Through the Special Land Acquisition Officer, Ratnagiri. ] Appellant

Versus

Chandrabhaga Sadashiv Shinde, at Ram Naka, Ratnagiri ] Respondent

Mrs. G.P. Mulekar, A.G.P. for the Appellants.

**CORAM : ABHAY S. OKA, J.**

DATE : 8TH AUGUST 2006

P.C.

1) Heard learned A.G.P. for the Appellant - State of Maharashtra. The challenge in this appeal is to the Judgment and Award dated 30th January 1993 passed by the learned Second Joint Civil Judge, Senior Division, Ratnagiri in Land Acquisition Reference No. 24 of 1987. The said reference was filed at the instance of the Respondent under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as "the said Act of 1894").

2) A Notification under Section 126(4) of The Maharashtra Regional and Town Planning Act, 1966 read with Section 6 of the Land Acquisition Act, 1894 was issued on 31st October 1981. Various lands at village

Pethshivapur, Taluka and District Ratnagiri were notified for acquisition under the aforesaid Notification. The reference subject matter of the present appeal is in respect of land bearing survey no. 347, Hissa no. 7 admeasuring 5 Are together with structure thereon owned by the present Respondent. The Award under Section 11 of the said Act was made on 23rd September 1986. Under the said Award, various amounts were awarded on account of compensation in respect of structures. The Appendix to the Award shows that the valuation of the structure has been made at Rs.20,667/-. The valuation is obviously in respect of a part of the structure which was constructed after obtaining permission of the concerned authority.

3) By the impugned Judgment and Award, the reference Court has granted a sum of Rs.30,000/- being cost of material used in the structure of the Hair Cutting Saloon, Rs.10,000/- on account of loss of earning and Rs.5,000/- on account of loss of suitable place. The reference Court awarded statutory benefits under Section 23(1)(A) and 23(2) of the said Act of 1894.

4) The learned A.G.P. appearing for the Appellant submitted that the evidence on record discloses that the construction of the structure used for Hair Cutting Saloon was un-authorised. She submitted that no compensation could have been awarded in respect of the

construction material used in the structure as the original claimant was always at liberty to remove the structure and to take away the construction material. She submitted that there was no evidence on record to show that the cost of the material was Rs.30,000/-. She submitted that there cannot be any compensation on account of loss of suitable place. She placed reliance on the judgment of Apex Court in the case of Ramesh Dutt v/s State of Punjab [1996) 10 Supreme Court Cases 160]. She submitted that as the business was being carried out in an un-authorised construction, compensation on account of loss of earning could not have been awarded. None appeared for the Respondent though Office remark states that notice is duly served.

5) I have considered the submissions. I have also perused the pleadings, notes of evidence and other documents on record. The Respondent-claimant examined her daughter. She stated that on the front side, there was a structure of Hair Cutting Saloon and on the back side, there was a structure which was used for residence. She stated that her two brothers were running Hair Cutting Saloon in the structure on land bearing survey no. 347, Hissa no. 7. She stated that income of Rs.2,000/- per month was being received from business of the saloon. She claimed that the Respondent was the tenant of the land below the structure. The Respondent also examined Shri. Chandrakant Parulekar, a Civil Engineer whose Valuation

Report was produced on record by the Respondent. The Report is as regards valuation of the disputed house. The report records that the market value of the structure was Rs,1,49,000/-. Apart from evidence of said two witnesses and valuation report, no other evidence is produced on record by the Respondent except copy of construction permission at Exhibit 51.

6) The reference Court came to the conclusion that house no. 1239 which is the structure of the Hair Cutting Saloon was un-authorised and the State Government had right to demolish the said structure. Therefore, market value of the structure was not awarded to the Respondent. There is nothing on record to show that the structure of the saloon was authorised. The document at Exhibit 51 relates to Municipal House No. 1239. Thus the said document shows that the construction of the other portion of the house (described as ‘Padavi’) was authorised. The other part of the structure in which Hair Cutting Saloon was located was not authorised. It is contended that before the Government took over the possession under Section 16 of the said Act of 1894, the Respondent could have taken away the material by dismantling the structure. However, the notice of possession which is on record does not indicate that opportunity was granted to the Respondent to take away the construction material.

7) The perusal of the record shows that there is absolutely no evidence on record to indicate what was the market value of construction material used in the construction of the structure. The opinion of the expert valuer and his evidence is completely silent on this aspect. There is no discussion in the judgment as to on what basis the trial Judge has awarded Rs.30,000/- being the cost of construction material. In absence of any evidence on record, the learned trial Judge could not have awarded the said amount. Therefore, so far as award of Rs.30,000/- on account of material used in construction is concerned, the Award made by the trial Court will have to be set aside.

8) In this case, the evidence on record does not establish that the income of saloon business was Rs.2,000/- per month. The reference Court has not accepted the said case and has held that at the most income can be Rs.500/- per month. On that basis, a sum of Rs.10,000/- has been awarded on account of loss of earnings. The said finding is reasonable and consistent with the evidence on record.

9) That takes me to the argument advanced as regards the compensation awarded on account of loss of suitable place. Perusal of Section 23 of the said Act shows that compensation under the said heading could not have been awarded. The Respondent has not established that the construction of the structure was

authorised. The Respondent has also not established any right in respect of the structure. Therefore there was no justification whatsoever to award the compensation of Rs.5,000/- on account of loss of suitable place.

10) Thus the award made by the reference Court only to the extent of Rs.10,000/- is justified and accordingly the impugned award needs to be modified. It appears that the reference Court has not awarded statutory benefit under Section 28 of the said Act of 1894. It is true that there is no appeal or cross objection filed by the Respondent. Considering the facts and circumstances of this case, powers under Rule 33 Order XLI of The Code of Civil Procedure, 1908 will have to be exercised for passing an award which will be consistent with the statutory provisions. Hence, I pass following order. :

**O R D E R**

i) The appeal is partly allowed.

ii) The operative part of the impugned judgment and award is substituted by following;

> "The reference is partly allowed with proportionate costs. The claimant is entitled to additional compensation of

Rs.10,000/-. The claimant is also entitled to all the statutory benefits under Section 23(1)(A), Section 23(2) and Section 28 of the Land Acquisition Act, 1894".

iii) The reference Court will calculate the amount of compensation payable to the Respondent within a period of 4 months from the date of receipt of writ of this order.

iv) There will be no order as to costs in this Appeal.

**( ABHAY S. OKA, J.)**